

## Ombudsman's Determination

Applicant	Mrs S
Scheme	Aviva ( <b>the Scheme</b> )
Respondent	Aviva Life & Pensions UK Limited ( <b>Aviva</b> )

## Outcome

1. I do not uphold Mrs S's complaint and no further action is required by Aviva.
2. My reasons for reaching this decision are explained in more detail below.

## Complaint summary

3. Mrs S's complaint is that Aviva incorrectly informed her that she could take benefits from three policies within the Scheme as a lump sum.

## Background information, including submissions from the parties

4. Mrs S's complaint is that Aviva incorrectly informed her that she could take benefits from three policies within the Scheme as a lump sum.
5. Aviva does not dispute that, on 3 January 2018, it gave Mrs S incorrect information. Specifically, she enquired about cashing in three policies with a total value of about £9,000, and she was incorrectly informed that she could.
6. But when Mrs S contacted Aviva again on 6 February 2018, to proceed with taking benefits, it informed her that these policies were in fact linked with two more policies and she could only take benefits from all five at the same time.
7. Mrs S complained to Aviva and it responded on 26 February 2018. It gave her a brief explanation of the policies, apologised for giving her incorrect information and offered her £150 compensation. She remained dissatisfied, so she contacted this Office.

## Adjudicator's Opinion

8. Mrs S's complaint was considered by one of our Adjudicators who concluded that no further action was required by Aviva. The Adjudicator's findings are summarised briefly below: -

- Based on the available information, what Aviva told Mrs S on 26 February 2018 was correct; what it told her on 3 January 2018 was incorrect; that is, she was misinformed.
  - The Ombudsman's general position on misinformation was the party who provided the incorrect information was not necessarily required to make good that information, but the effect of the information could be considered.
  - If someone has changed his position in reliance on the incorrect information, for example if he has taken actions he would not otherwise have taken, which could not be undone, the party responsible for providing the incorrect information might be directed to pay redress for financial loss and an award for distress and inconvenience.
  - But there was insufficient evidence that Mrs S had changed her position in reliance on the incorrect information; she had only suffered a loss of expectation.
  - Mrs S said for some years she had received correspondence in relation to two policies, and separate correspondence in relation to the other three. The Adjudicator said it was not unusual for policies to be treated in this way. In Mrs S's case, Aviva explained this was done to identify two policies transferred into the Scheme containing certain protected benefits.
  - But the Scheme was one pension; therefore, if Mrs S wished to take benefits from it, she would have to cash in all five policies in one go. As this was the correct position, there were insufficient grounds for Aviva to make a concession.
  - Regardless of the reason for the incorrect information, there was insufficient evidence it had caused Mrs S an actual financial loss. Moreover, the benefits were still available to be taken.
  - Mrs S felt Aviva's offer of £150 did not make up for its error. But the offer was not made to replace the benefits she was incorrectly told she could have; it was to recognise the disappointment and loss of expectation she had suffered. The Adjudicator said the offer was fair in the circumstances.
9. Aviva accepted the Adjudicator's Opinion but Mrs S did not and the complaint was passed to me to consider. Mrs S provided her further comments which do not change the outcome. I agree with the Adjudicator's Opinion and I will therefore only respond to the key points made by Mrs S for completeness.

## **Ombudsman's decision**

10. Mrs S says one of our jurisdiction adjudicators informed her "she could see no reason why [her] case would not be justified". But there is no further evidence to substantiate this. Our jurisdiction adjudicators do not express opinions on the merits of complaints; they only seek to establish whether we can investigate further.
11. Aviva accepts it provided incorrect information on 3 January 2018. However, Aviva is not necessarily required to make good that information. What I must decide is, first,

whether the information caused Mrs S to act detrimentally and, second, whether it caused her significant distress and inconvenience.

12. Mrs S says at no point was she asked how Aviva's misinformation would affect her. She has since explained, following the Adjudicator's Opinion, her reasons for wishing to access her pension, and the details of her overall financial situation. These include the need for urgent renovations on her house, and £9,000 to cover her mortgage and bills. Mrs S says without the money from the Scheme she would be unable to pay her mortgage and bills and would have to sell her home.
13. Mrs S says she accepted an offer on her house on 12 June 2018. But that was after Aviva confirmed the correct position regarding the Scheme on 6 February 2018; and, it was after Aviva formally responded to her complaint on 26 February 2018.
14. To be able to uphold this complaint, I would need to be satisfied that Mrs S made detrimental changes as a result of the incorrect information; that is, that she did something – or failed to do something – after 3 January 2018 but before 6 February 2018 that she would not have done if she had been given the correct information.
15. However, the evidence indicates that Mrs S was already in need of funds before Aviva misinformed her. Indeed, this appears to be why she contacted it regarding accessing her pension in the first place. This being the case, I do not find that her current financial hardship is the result of the incorrect information; the information has caused her a loss of expectation but not an actual loss.
16. I acknowledge Mrs S would have experienced disappointment on being told of the correct position. However, I do not find that she would have experienced significant distress and inconvenience that justifies an award of £500. Therefore, I leave it with Mrs S to decide whether, on reflection, she is prepared to accept Aviva's existing offer in resolution of her complaint.
17. Therefore, I do not uphold Mrs S's complaint.

**Karen Johnston**

Deputy Pensions Ombudsman

18 July 2018